

A G. Contract No.: KR05-0172TRN
ECS File No.: JPA 05-010
Project No.: HES-090-A(005)A
Section: SR 90 at Moson Road
Project: Intersection Improvements
TRACS No.: HX174 01C
Budget Source Item No.: 72806

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SIERRA VISTA

THIS AGREEMENT is entered into this date May 31, 2005, pursuant to Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SIERRA VISTA acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The parties hereby agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to possible substantial change before project completion; b) The parties shall perform their responsibilities consistent with the Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

4. The State and the City desire to participate in the design, construction and maintenance of a new warranted traffic signal and emergency pre-emptive equipment at the intersection of State Route (SR) 90 at Moson Road, hereinafter referred to as the "Project", for a total estimated amount of \$1,156,200.00. The parties hereto agree that the State will design, construct, and maintain the traffic signal and the City agrees to maintain the emergency pre-emptive equipment and pay for electrical energy to operate the traffic signal

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27537
Filed with the Secretary of State
Date Filed: 05/31/05

Janice K. Brewer
Secretary of State

By: Darryl D. Greenwald

II. SCOPE OF WORK

1. The State shall:

a. Prepare and provide scoping materials, design plans, technical specifications, Special Provisions, and other documents and services required for scoping, design, contract bidding, project construction, in addition to project construction administration activities and submit same to the City for concurrence

b. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

c. Upon execution of the Project provide maintenance to the signal, attached lighting and its appurtenances, in the State's right-of-way

d. Allow the City rights-of-entry to the Traffic Signals on the State's right-of-way, for all planned maintenance work to the emergency vehicle pre-emptive equipment and the Fluoresco lighting street signs and the City will notify the State prior to all planned maintenance work.

e. Not be obligated to maintain the emergency vehicle pre-emptive equipment and the Fluoresco lighting street signs, should the City fail to budget or provide perpetual and proper maintenance as set forth in the Agreement.

2. The City shall:

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's Scope of Work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

c. Notify the Safford District Maintenance Office prior to planned maintenance work of the emergency vehicle pre-emptive equipment and the Fluoresco lighting street signs.

d. Upon execution, approval and acceptance of the Project and on behalf of the parties herein, pay for electrical energy service to properly operate the traffic signal system, at the City's expense.

e. Upon execution of the Project, provide for at its own cost and as an annual item in its budget, perpetual and proper maintenance to the emergency vehicle pre-emptive equipment and the Fluoresco lighting street signs.

f. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

III. MISCELLANEOUS PROVISIONS

1. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses liability, costs, or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance, provided by the City shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said Project.

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 121-1-12213) and all applicable Federal regulations under the Act including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Sierra Vista
Attn: Mike Clawson, Purchasing Manager
1011 N. Coronado Drive
Sierra Vista, AZ 85635
(520) 458-3315

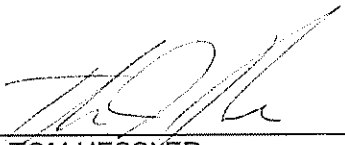
11. In accordance with Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SIERRA VISTA

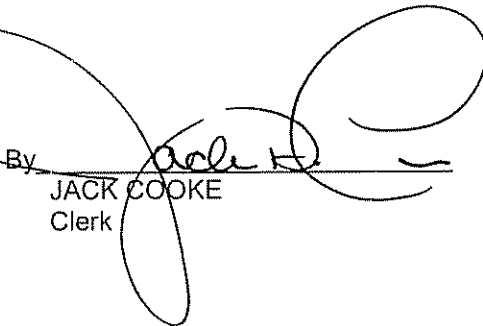
STATE OF ARIZONA

Department of Transportation

By 
TOM HESSLER
Mayor

By 
MICHAEL P. MANTHEY, P.E.
State Traffic Engineer

ATTEST:

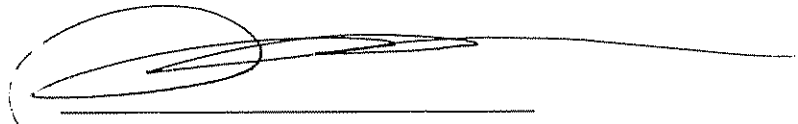
By 
JACK COOKE
Clerk

JPA 05-010

APPROVAL OF THE CITY OF SIERRA VISTA

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SIERRA VISTA, an Agreement among public agencies which, has been reviewed pursuant to A R S § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement

DATED this _____ day of _____, 2005.



City Attorney

RESOLUTION 2005-064

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) TO CONSTRUCT INTERSECTION IMPROVEMENTS AT STATE ROUTE 90 / MOSON ROAD; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the settled policy of the City Council to authorize the City staff to seek, make application for, and accept any federal and state funding assistance for improvements to our community that are beyond the funding capability of City revenues, when it is determined by the City Council to be in the best interest of the City; and

WHEREAS, the city and state share responsibilities of providing streets and public roadways which are safe and meet the transportation needs of the general public; and

WHEREAS, the anticipated future volume of traffic at the intersection of State Route 90 and Moson Road cannot be safely or expeditiously accommodated by the existing intersection configuration and must be signalized and upgraded; and

WHEREAS, it is the mutual interest and benefit for Arizona Department of Transportation (ADOT) and the City of Sierra Vista to have ADOT pay the costs to construct said improvements to the Intersection of State Route 90 at Moson Road and the City to pay the costs of electricity, maintenance of the emergency vehicle pre-emptive equipment, and the Fluoresco lighting street signs.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista relating to intergovernmental agreements, most recently affirmed by Resolution 2004-164, be, and hereby is, reaffirmed.


SECTION 2

The City Council approves entering into an Intergovernmental Agreement with ADOT to construct intersection improvements at State Route 90 and Moson Road, attached and made a part hereof by this reference.

SECTION 3

The City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

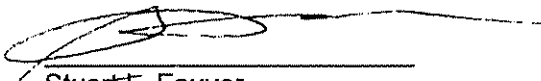
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF
THE CITY OF SIERRA VISTA, ARIZONA THIS 28th DAY OF APRIL 2005.

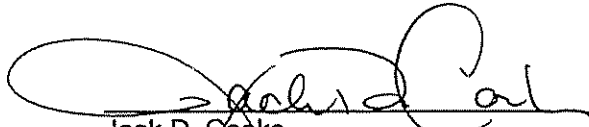


Thomas J. Hessler
Mayor

Approval as to Form:

Attest:



Stuart L. Fauver
City Attorney

Jack D. Cooke
City Clerk

Prepared by: D. Michael Clawson, Purchasing Manager



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8859


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0172TRN (**JPA 05-010**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 18, 2005

TERRY GODDARD
Attorney General



JEFFEREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
905669